

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Concerned Pastors for Social Action, et al.,
Plaintiffs,

Case No. 16-10277
Hon. David M. Lawson

v.

Nick A. Khouri, et al.,
Defendants.

**CITY OF FLINT’S AND NON-PARTY MAYOR SHELDON NEELEY’S EX PARTE
MOTION TO SERVE SUPPLEMENTAL PLEADING**

Defendant City of Flint (the “City”) and the non-party Mayor Sheldon Neeley (in his official capacity) (the “Mayor”) respectfully request, ex parte, that this Court either (a) allow them to serve a supplemental pleading in this matter, styled as “City of Flint’s and Non-Party Mayor Sheldon Neeley’s Supplemental Response to Plaintiffs’ Motion for Contempt” or (b) to deem the information and evidence provided herein as admitted and filed (the “Supplemental Response”).

The affidavit of City Administrator Clyde D. Edwards is attached hereto as **Exhibit A** (the “Edwards Affidavit”). The Edwards Affidavit sets forth “transaction[s], occurrence[s], or event[s] that happened after the date of” filing the Response to Plaintiff’s Motion for Contempt, the “pleading to be supplemented” (as required by Fed. R. Civ. P. 15(d)).

The City and the Mayor respectfully request that this Court either (a) allow them to serve a supplemental pleading in this matter or (b) deem the information and evidence provided herein as admitted and filed.

Respectfully submitted,

Dated: June 22, 2023

/s/ Joseph N. Kuptz
Joseph N. Kuptz (P-68623)
City of Flint Law Department
1101 S. Saginaw St., 3rd Floor
Flint, MI 48502
jkuptz@cityofflint.com
P-68623

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Concerned Pastors for Social Action, et al.,
Plaintiffs,

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Defendants.

**BRIEF IN SUPPORT OF CITY OF FLINT’S AND NON-PARTY MAYOR SHELDON
NEELEY’S EX PARTE MOTION TO SERVE SUPPLEMENTAL PLEADING**

STATEMENT OF THE ISSUE PRESENTED

1. Should the Defendant City of Flint and non-party Mayor Sheldon Neeley be allowed to serve a supplemental response to Plaintiffs' Motion for Contempt, which sets forth "transactions, occurrences, or events" (specifically, the fact that the City has corrected all deficiencies alleged by Plaintiffs) that happened after the date of the filing of their original response (or, in the alternative, to deem the information and evidence provided herein as admitted and filed)?

CONTROLLING AUTHORITY FOR THE RELIEF SOUGHT

Fed. R. Civ. P. 15(d)

I. INTRODUCTION AND FACTUAL/PROCEDURAL BACKGROUND

Plaintiffs filed a Motion for Contempt seeking to hold the City of Flint (the “City”) and non-party Mayor Sheldon Neeley (in his official capacity) (the “Mayor”) in contempt of court for alleged violations of this Court’s previously issued Order Granting Plaintiffs’ Fifth Motion to Enforce Settlement Agreement.

Specifically, Plaintiffs contended that the City had failed to (1) determine, by May 1, 2023, which City homes have remaining property restoration work; (2) provide timely, accurate, and complete monthly restoration reporting, and (3) conduct mail and in-person outreach to residents to attempt to obtain their permission to conduct service line excavations (and where appropriate, replacement).

On June 14, 2023, the City and the Mayor timely filed their Response to Plaintiffs’ Motion for Contempt. However, since that Response was filed, the City has corrected all of the alleged deficiencies. Therefore, because of these “transactions, occurrences, or events” that happened after the date of the original response, the City and the Mayor seek the Court’s permission to either (a) allow them to serve a supplemental pleading in this matter, styled as “City of Flint’s and Non-Party Mayor Sheldon Neeley’s Supplemental Response to Plaintiffs’ Motion for Contempt” or (b) to deem the information and evidence provided herein as admitted and filed

Specifically, after the filing and service of the City’s and the Mayor’s Response to Plaintiffs’ Motion for Contempt, several events have occurred:

- Alleged Missing Outreach Completed – in their Motion for Contempt, Plaintiffs provided documentary evidence alleging incomplete/missing outreach at 16 total addresses (the “Original List”). After filing their Motion, Plaintiffs provided the City with an additional list of 308 addresses for which outreach was alleged to be

missing or incomplete (the “Supplemental List”). Of those 308 addresses on the Supplemental List, 11 were duplicates from the Original List. Therefore, there were a total of 313 unique addresses that were alleged to be missing some form of outreach. The City analyzed that data and where outreach efforts were potentially unsubstantiated or in question, the City completed the missing outreach to those addresses. All 313 addresses have now received the required outreach efforts pursuant to the terms of the Settlement Agreement (and assuming as true Plaintiffs’ allegations of missing outreach). Reporting evidencing of this has been provided to Plaintiffs. **Exhibit A**, paragraph 11 (and is attached thereto as Exhibits 5 and 6).

- Restoration Status Site Visits Complete – the City has completed a determination of the restoration status of all addresses on the 2022 Replacement Eligible Homes List (**Exhibit A**, paragraph 5), and compliant reporting has been provided to Plaintiffs. **Exhibit A**, paragraph 11 (and is attached thereto as Exhibits 1, 2 and 3).
- Provided Restoration Reporting for Current Phase – the City has provided Plaintiffs with compliant reporting evidencing restoration work completed by the City since November 1, 2022. **Exhibit A**, paragraph 11 (and is attached thereto as Exhibit 4).

II. ANALYSIS

Federal Rule of Civil Procedure 15(d) states, in part:

On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.

“Liberality is the rule with regard to supplemental pleadings as well. The purpose of a supplemental pleading is to set forth new facts that have occurred since the filing of the original pleading and that affect the controversy and the relief sought. Its function is to bring the action ‘up to date.’” *Weisbord v Michigan State University*, 495 F Supp 1347, 150-1351 (W.D. Mich., 1980).

Here, the allowance of the filing to include the information and reporting cited above and set forth in the attached **Exhibit A** affidavit would affect the controversy and the relief sought and serve to bring this matter “up to date.” Furthermore, there should be no prejudice, undue delay or harm to Plaintiffs as the City’s and Mayor’s Response previously filed in this matter noted that the City anticipated the restoration status site visits and compliant reporting would be completed before the hearing on this matter

III. CONCLUSION

Wherefore, for the reasons stated, the Defendant City of Flint and the non-party Mayor Sheldon Neeley respectfully request that this Court, ex parte, grant their motion to either (a) allow them to serve a supplemental pleading in this matter or (b) to deem the information and evidence provided herein as admitted and filed.

Respectfully submitted,

Dated: June 22, 2023

/s/ Joseph N. Kuptz
Joseph N. Kuptz (P-68623)
City of Flint Law Department
1101 S. Saginaw St., 3rd Floor
Flint, MI 48502
jkuptz@cityofflint.com
P-68623

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2023, I electronically filed the foregoing pleadings using the ECF system which will send notification of such filing to the counsels of record.

Respectfully submitted,

Dated: June 22, 2023

/s/ Joseph N. Kuptz
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